

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

FILED

JUL 19 2004

LARRY W. PROPPS, CLERK
CHARLESTON, SC

ALI SALEH KAHLAH AL-MARRI,
et al.,

Petitioner,

-versus-

C.T. HANFT, Commander, Naval
Consolidated Brig, 1050 Remount Road,
North Charleston, South Carolina

Respondent.

C/A: 2:04-2257-26AJ

**NOTICE OF MOTION
AND MOTION**

TO: MILLER W. SHEALY, JR., ESQUIRE
ASSISTANT UNITED STATES ATTORNEY
151 Meeting Street, Second Floor
Charleston, South Carolina 29401

PLEASE TAKE NOTICE that Petitioner, Ali Saleh Kahlah al-Marri, by and through his undersigned attorneys, hereby moves this honorable Court for an Order directing Respondent to allow Petitioner's counsel immediate access to him or, in the alternative, for a shortening of time within which Respondent must answer Petitioner's habeas petition, and an expedited determination of Petitioner's right to counsel. In support of this motion, Petitioner relies upon the following:

1. Petitioner has been detained as an "enemy combatant" at the Naval Consolidated Brig in North Charleston, South Carolina, since June 23, 2003;
2. Petitioner has been denied access to counsel since on or about May 29, 2003, despite

repeated requests by counsel to meet with him, all of which were ignored by the Government;

3. The last such written request was made by counsel to Deputy Solicitor General Paul D. Clement, on Petitioner's behalf, on June 29, 2004, a day after the Supreme Court issued its decision in Hamdi v. Rumsfeld, 542 U.S. _____, Slip Op. At 32 (2004) (holding that an enemy combatant must be afforded access to counsel);
4. The Government has ignored counsel's June 29, 2004, correspondence to meet with Petitioner as it has all previous requests;
5. Newly associated local counsel contacted Assistant United States Attorney Miller W. Shealy, Jr., via e-mail, on Saturday, July 17, 2004, and was advised that a response from the Government should be anticipated "early" this week.
6. On July 19, 2004, Mark A. Berman, Esq., *pro hac* counsel (application pending) for Petitioner and co-petitioner in this matter, spoke by telephone with Assistant Solicitor General David Salmons, who has represented the Government in this matter. Counsel orally requested the opportunity to meet with Petitioner and inquired whether the Government would consent to such relief which was to be sought by way of motion. Mr. Salmons responded: "The Government is not in a position to consent to access to counsel." Therefore, the Government is expected to oppose this motion.
7. Petitioner believes, in light of Hamdi, there is no legal basis for prohibiting him access to counsel; and

8. Prior to filing this motion, attorneys for Petitioner conferred with opposing counsel as stated hereinabove.

For these reasons, the Court should order Respondent to afford counsel immediate access to Petitioner or, in the alternative, order the Government to file an answer within three days, and to address the right to counsel issue on an emergent basis.

Respectfully submitted,

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BY: 

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Charleston, South Carolina

July 19, 2004